IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application NO.1162 of 2004

In

First Appeal No.639 of 2004

Dwarkadas Gangadas Panchamatiya
and Anr. ... Applicants

V/s

Chagan Nanya Wanjara and Ors .. Respondents

Shri A.A.Kumbakoni with Rajesh S. Datar for Applicants

CORAM:S.R.SATHE,J.

DATED:18th Jan. 2006

P.C.:-

. The learned Advocate for the Applicants submits that he has already issued notice to the Respondent.

. None appeared for the Respondent.

. Heard the learned Advocate for the Applicant. Perused the papers.

. From perusal of the record it is very clear that applicants original plaintiffs had filed Short Cause Suit

No.2746 of 1985 against the Respondents to demolish unauthorised construction and for possession of the encroached portion. They had also prayed for permanent injunction restraining Respondent from disturbing the applicants' possession.

. Admitted Interim injunction was granted in favour of the Applicants during pendency of the said suit and it was in operation till 4-2-2004. Thereafter status quo order was passed on 29-3-2004 by this Court (Coram:Kakade J). The said order was again extended for a period of six weeks by the said Court and order to that effect was passed on 5-5-2004.

. The Applicants had received the property in question under agreement for sale and suit for specific performance has been filed by the applicants against the original owner. Admittedly in the said suit earlier there is injunction order against the owner. From the perusal of the record it appears that during pendency of the suit the Court Commissioner was appointed. From his report it is clear that there are some construction on the suit land. According to the applicants they are encroachers. The learned Advocate for the applicants submitted that he is in fact seeking injunction in respect of remaining portion i.e. open space around the said construction forming part of the suit land. From the Commissioner's Report it appears that only occupants of the structures occupied by the tress passers are not

in actual possession of remaining portion of the suit land. The Applicants apprehend that those persons would make encroachment on remaining portion and that would cause irreparable loss to the present applicants. Having regard to the fact that for quite long time and in particular during pendency of the suit applicant was in possession and subsequently also status quo order was passed. It is necessary to issue interim order in favour of the present applicant. Hence the opponents, their agents, servants are hereby restrained from obstructing applicants' possession in respect of open portion around the constructed portion shown in Commissioner's Report. However, it is made clear that the applicants shall not obstruct the occupants of the said constructed building in the suit land for their ingress and egress to the said construction portion. It is further made clear that occupants shall not carry out any construction activity or any other activity in the remaining open portion of the suit land which is shown in the Commissioner's map and they shall not create any third party interest or would not dispose of the said property in any manner without prior permission of this Court.

. The above order is to remain in force till the disposal of the Appeal.

(S.R.SATHE,J.)

injunction was granted in favour of the Appellant during pendency of the suit i.e. from 4-2-2004. Thereafter in this appeal status quo order is passed wherein it was stated that parties to maintain status quo in the meantime. Admittedly in the specific performance suit it has been prima facie held that the present applicant is in possession of the suit property. However, from perusal of the report of the Commissioner it appears that there are some construction which are in possession of the Respondents-alleged encorachers. Having regard to the fact that injunction order was in operation in favour of the applicants till 4-2-2004 and thereafter status quo order was granted on Original Side proceedings it has been held that the applicant is in possession.

. It is necessary to issue interim injunction in favour of the present applicant till the disposal of the appeal. Hence the opponents, their servants agents hereby restrained from obstruction applicant’s possession in respect of open portion around the construction portion shown in the Commissioner’s report. However, it is made clear that the applicant shall not obstruct the occupants of the said encroached portion as well as the opponents for ingress and egress of the said property and it is further made clear that the applicant shall not carry out any activity or shall not create any further construction in remaining open space which is shown in the

Commissioner’s map and shall not create any third party interest in respect of the said remaining land without prior permission of this Court.

(S.R.SATHE,J.)